



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/154431

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 27, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services to recover FoodShare benefits (FS), a hearing was held on January 21, 2014, by telephone.

The issue for determination is whether petitioner was overpaid FS in October, 2013 because his children were put on his FS case erroneously.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Katherine May  
Milwaukee Enrollment Services  
1220 W. Vliet St.  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In September, 2013, petitioner received FS for himself only. His three children received FS on their mother's case. Agency records showed that the parents had 50-50 placement but the children were on the mother's FS case because she applied for FS first.
3. On August 30, 2013, petitioner reported that the children were living primarily with him and provided verification that the public school showed his address as the primary address.

4. Coincidentally the mother's FS case closed effective October 1, 2013 because she did not complete a review. As a result the children were added to petitioner's ongoing case, and effective October 1, 2013 his FS increased from \$200 to \$527.
5. In mid-October the mother submitted her review materials late but within the 30-day time period for re-opening FS without a new application. An agency worker, noting that the children already received FS on petitioner's case, nevertheless issued FS for the children to the mother manually.
6. By a notice dated November 14, 2013, the agency informed petitioner that he was overpaid \$471 in FS in October because the children should not have been included in his FS household, claim no. [REDACTED].
7. In November, 2013, the Milwaukee County Circuit Court changed the placement order to give petitioner primary physical placement, noting that the "father had more placement as of late than mother."

### DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

In Wisconsin, the state agency has developed policy standards to determine FS household composition in cases involving children in joint custody. The policy is clear in requiring that the child cannot be a member of more than one FS group in the same month. See the FoodShare Wisconsin Handbook, §3.4.1. State policy also determines the assignment of a joint custody child to a specific household:

Children are included in the household where they reside when they are under the care and control of a parent a person's biological, step, or adoptive mother or father regardless of age. Parenthood doesn't have to be verified or other caretaker in that household. There may be situations when the residence of a child a person's biological, step, or adopted son or daughter, regardless of age, is not easily determined. There are many methods that can be used to determine the child's residence. If the residence of a child is questionable, court documents can be used to determine if there is a primary caretaker designated. It may be a situation of joint custody and a 50-50 custody split. If one parent is not designated as primary caretaker, the parents can be asked to decide. Individuals can only be included in one food unit.

If the parents can not or will not decide, compare the parents' activities and responsibilities against the following list and determine which one is exercising more control than the other:...

Only one parent can receive FS for a child. If you still can not determine which food unit the child should be in, the caretaker that first applies would be eligible. Use the best information available to make your decision, and document in case comments the basis of

your determination. If you still can not determine which food unit the child should be in, call the CARES Client Assistance for Reemployment and Economic Support call center.

FoodShare Wisconsin Handbook, §3.2.1.1, emphasis added in final paragraph; I left out the list of questions to be asked in the second-last paragraph because they are irrelevant to the issue at hand.

A person cannot receive FS in two households in a month. 7 C.F.R. §272.4(e)(1). By issuing the supplemental FS to the mother in this case the agency issued FS to the children in two households in the month of October, 2013.

When the mother's case closed, the children were added to petitioner's case. When the mother came in in mid-October, the agency worker should have checked petitioner's case and the worker would have seen that petitioner was asserting that he had taken over as primary caretaker. That should have triggered an investigation into the primary caretaker for FS purposes. The one response that should not have occurred was for the worker to issue a second FS allotment for the children for the month. At best the worker could have removed the children from petitioner's case for November, but the issuance of FS to petitioner for October was not invalid. After all, it was the mother's fault that her FS closed.

I conclude that petitioner was not overpaid FS for October. The FS were issued legitimately based upon him being the only parent with an ongoing FS case as of October 1, 2013. Furthermore, we know now that even the circuit court has confirmed that he is the primary caretaker.

### **CONCLUSIONS OF LAW**

Petitioner was not overpaid FS in October, 2013 because his children were on his case legitimately, and with the mother's case closing effective October 1, 2013, his was the only open FS case for which they were eligible when issued. The agency erred by issuing the mother a supplemental FS allotment for the children after they already receive FS on petitioner's case.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to rescind overpayment claim no. [REDACTED] against petitioner and to cease recovery of it. Any FS already recouped from petitioner shall be restored to him. The agency shall take this action within 10 days of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 27th day of January, 2014

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 27, 2014.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability